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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 38A05-0611-CR-681
)	
WILBURN R. ADAMS,)	
)	
Appellee-Defendant.)	

APPEAL FROM THE JAY SUPERIOR COURT
The Honorable Joel D. Roberts, Judge
Cause No. 38D01-0601-FD-15

May 21, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The State of Indiana appeals from the Jay Superior Court's grant of a suppression motion filed by Wilburn R. Adams ("Adams"). The State raises one issue, which we restate as: whether the trial court erred when it suppressed evidence of a warrantless blood draw. Concluding that the investigating police officer did not have probable cause to believe that Adams was driving while intoxicated when he offered Adams a chemical test, we affirm.

Facts and Procedural History

On the evening of November 27, 2005, Jay County Sheriff's Deputy David Tarter ("Deputy Tarter") stopped Adams after observing him "almost run a stop sign," take a wide left turn, and then twice cross the centerline. Tr. pp. 6-7. Adams was alone in his car and Deputy Tarter noticed Adams's "slow speech" and "grogginess." Tr. p. 23. Deputy Tarter administered a portable breath test, which revealed no alcohol present in Adams's breath. Deputy Tarter then administered three field sobriety tests. Adams passed the horizontal gaze nystagmus test, but failed the one-legged stand and the walk and turn test.

Deputy Tarter informed Adams that he was going to take him to the Jay County Hospital for a blood draw. On the way to the hospital, Adams told Deputy Tarter that he had taken prescription valium and vicodin earlier that day. At the hospital, Deputy Tarter advised Adams of the implied consent law, and Adams submitted to a blood draw. Deputy Tarter decided not to arrest Adams and instead drove him home.

Four days later, the State charged Adams with operating a vehicle while intoxicated and operating a vehicle with a schedule I or II controlled substance in his

blood, both as Class D felonies due to a prior conviction. Adams moved to suppress the evidence from the blood draw. The trial court conducted a hearing on October 6, 2006. On October 9, 2006, it issued an order granting Adams's motion to suppress. The State appeals pursuant to Indiana Code section 35-38-4-2(5) (2004).

Standard of Review

Generally, we review a trial court's decision to grant a motion to suppress as a matter of sufficiency. Moriarity v. State, 832 N.E.2d 555, 557-58 (Ind. Ct. App. 2005). When conducting such a review, we will not reweigh evidence or judge witness credibility. Id. at 558. Here, the State appeals from a negative judgment and must show that the trial court's ruling on the suppression motion was contrary to law. Id. (citing State v. Estep, 753 N.E.2d 22, 24-25 (Ind. Ct. App. 2001)). This court will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. Id.

Discussion and Decision

The Fourth Amendment generally prohibits warrantless searches and seizures. Wiggins v. State, 817 N.E.2d 652, 656 (Ind. Ct. App. 2004) (citing Hannoy v. State, 789 N.E.2d 977, 982 (Ind. Ct. App. 2003), trans. denied). Searches conducted without a warrant are per se unreasonable subject to a few well-delineated exceptions. Id. When a search is conducted without a warrant, the State bears the burden of proving that an exception to the warrant requirement existed at the time of the search. Id.

Indiana Code chapter 9-30-7 provides that persons who operate motor vehicles impliedly consent to submit to a portable breath test or chemical test as a condition of

operating a vehicle in Indiana. See Ind. Code § 9-30-7-2 (2004). The provisions of the implied consent law only apply where the officer has probable cause to believe that a person has committed an offense such as operating a vehicle while intoxicated. Ind. Code § 9-30-6-2(a) (2004).

The State argues that the trial court erred when it determined that Deputy Tarter lacked probable cause to offer Adams a chemical test. A law enforcement officer has probable cause to offer a chemical test where the officer has knowledge of facts and circumstances that would lead a reasonably prudent person to believe that the crime of operating a vehicle while intoxicated has been committed. Dalton v. State, 773 N.E.2d 332, 334 (Ind. Ct. App. 2002), trans. denied (citing Gibson v. State, 518 N.E.2d 1132, 1136 (Ind. Ct. App. 1988), trans. denied). Probable cause is determined on the basis of the totality of circumstances. Id. at 335.

Here, Deputy Tarter testified at the suppression hearing that he noticed that Adams's speech was slow and that he appeared groggy, but did not note this in the probable cause affidavit. Tr. pp. 16, 23. He did not detect an odor of alcohol, nor did he see any beverage containers in the car. Tr. p. 15. He made no observation that Adams had bloodshot eyes, problems with manual dexterity, or an abusive attitude. Tr. p. 16. Deputy Tarter did not observe Adams staggering or leaning on his vehicle for balance. Tr. p. 22.

Deputy Tarter testified that Adams passed the horizontal gaze nystagmus test, but failed the one leg stand and the walk and turn test. Tr. p. 10. Other than the fact that Adams raised his arms more than six inches from his sides during the one leg stand test,

no details were offered at the suppression hearing to support Deputy Tarter's conclusion that Adams failed the two field tests. See tr. pp. 19-20.

Under these facts and circumstances, we conclude that Deputy Tarter lacked probable cause to believe that Adams had committed an offense under Indiana Code chapter 9-30-5. Therefore, the trial court properly suppressed the results of the blood draw.

Affirmed.

NAJAM, J., and MAY, J., concur.